NATIXIS
GLOBAL ASSET MANAGEMENT

July 20, 2015

Via email to e-OED@dol.gov

Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
Washington, DC

Ladies and Gentlemen:
Natixis Global Asset Management ("Natixis") appreciates the opportunity to comment on the notice of proposed rulemaking from the Department of Labor ("Department") amending the regulatory definition of the term "investment advice" under 29 CFR § 2510.3-21(c) so as to more broadly include as "fiduciaries" those persons who render certain advice to plans and individual retirement accounts ("IRAs") for a fee, for purposes of Section 3(21) of the Employee Retirement Income Security Act ("ERISA") and section 4975(e)(3) of the Internal Revenue Code ("IRC").

We are the centralized distribution unit in the U.S. for Natixis ($890.0 billion in assets under management (AUM))[1], which is a multi-investment management organization that offers a single point of access to more than 20 specialized investment firms in the Americas, Europe and Asia. The firm ranks among the world's largest asset managers.[2] Through its **Durable Portfolio Construction®** philosophy, the company is dedicated to providing innovative ideas on asset allocation and risk management that can help institutions, advisors and individuals address a range of modern market challenges.

Natixis shares and supports the Department's desire to reduce harmful conflicts of interest, but also respectfully questions the Department's ability to do so effectively through the new rule as currently proposed. We believe it is critical to maintain, and enhance, access to education and advice for investors and employers and to not limit investment choice. However, we believe the proposal will make retirement investing less accessible and more complicated especially to those who need advice and education most.

Fiduciary Definition: We currently serve as a fiduciary to investment advisory clients, including ERISA accounts and IRA owners. In each case we have reached a common understanding with our client that we are acting as a fiduciary for the account. However, the proposal presents significant ambiguity in the establishment of a fiduciary relationship. This ambiguity arises in terms of the types of activities that give rise to the fiduciary relationship and the unilateral

[1] Net asset value as of December 31, 2014. AUM may include assets for which non-regulatory AUM services are provided. Non-regulatory AUM includes assets which do not fall within the SEC's definition of 'regulatory AUM' in Form ADV, Part 1.
[2] Cerulli Quantitative Update: Global Markets 2015 ranked Natixis Global Asset Management, S.A. as the 17th largest asset manager in the world based on assets under management ($890 billion) as of December 31, 2014.

nature of the determination that a fiduciary relationship has been established. We believe the proposal must be clarified to specifically exclude preliminary information gathering activities, such as responding to requests for proposal and making sales presentations, from the scope of the rule. We also believe it is necessary to clarify that the provision of model portfolios does not result in the establishment of a fiduciary relationship. Additionally, we believe it is critical to maintain the mutuality concept (i.e., meeting of the minds) present in the current rule.

Sales Activities: We believe that if the proposed rule is adopted in its current form, general marketing efforts will result in the creation of fiduciary relationships that are not intended - by either party. We are concerned that marketing pieces and sales presentations that are intended as introductory information for ERISA plans and IRAs, to begin the process of considering retaining an adviser, will be deemed to create a fiduciary relationship, where even at the conclusion of the sales process such a relationship is not intended by both parties. We believe that this result could have an adverse effect on the flow of information to plans and IRAs, to their significant detriment.

Maintaining the mutuality concept will ensure that the fiduciary relationship is established by parties who make a conscious decision. The proposed rule, due to its lack of the mutuality concept, makes it possible for one party to believe that a fiduciary relationship is in place, while the other party may not have the same view. Without a meeting of the minds, the proposed rule will have the certain result of breaches in duty where an investment manager, in the hopes of eventually establishing an investment management relationship, is deemed a fiduciary but has not complied with the myriad requirements because the investment manager did not intend, at that point in the interaction, to establish a fiduciary relationship.

We respectfully submit that simply marketing investment management capabilities and products should not give rise to a fiduciary relationship and possible fiduciary liability. Without the certainty of knowing when the fiduciary relationship has been established, investment managers are left to wonder if there is some ERISA plan or IRA out there that will later claim that a sales presentation or RFP response established a fiduciary relationship.

Model Portfolio Provider Relationships: We are concerned about the way the proposed rule impacts model portfolio provider relationships, which are prevalent in the separately managed-account and unified managed-account space. In the separately managed-account and unified managed-account space, a model portfolio provider is typically a registered investment adviser that sells its investment research (i.e., model portfolio) to a third party registered investment adviser. The registered investment adviser that buys the model portfolio is the entity that manages a client's account and is the fiduciary to that client. The registered investment adviser managing the client's account may, and typically does, use the model portfolio as guidance in providing investment management services to the client, but has the discretion to deviate from the model portfolio to meet client specific needs. In fact, the model portfolio provider does not know anything about the registered investment adviser's client, including even whether the client is subject to ERISA requirements.

We submit that imposing a fiduciary obligation on an entity that provides its model portfolio to another entity for a fee, when it has no information, interaction or connection to the investor is

not appropriate as the model portfolio provider cannot fulfill the obligations required of a fiduciary. Such a result is impractical and raises other regulatory concerns (i.e., requiring the sharing of underlying client information raises privacy concerns). However, more importantly in our view, the downstream impact of imposing such an obligation on model providers likely will limit the universe of investment managers that will be willing and able to participate in the model-portfolio provider space, which, to the detriment of ERISA plans and IRAs, will limit the available investment universe and impact an ERISA plan's and IRA's ability to diversify their overall investment portfolios.

Low Fee Investments Exemption: The proposal requests comment on the idea of excluding "low-fee" investments from the fiduciary standard. By suggesting this possible exemption, it appears that the Department has a sole focus on fees to the exclusion of other factors that fiduciaries must consider in recommending investments. In suggesting such an exemption the Department would take upon itself the role of fiduciary by affirmatively deciding that "low cost" (i.e., passively managed) investments are in the best interest of ERISA plans and IRAs. We note that, historically, the courts, Congress and the Department have not sought to establish an approved list of investments or otherwise to regulate fiduciary decision-making substantively, and we see this suggested exemption as potentially troubling.

We respectfully disagree with the assumption that low-cost passive investments are inherently better for clients. Market conditions vary over time and no single asset class or investment style is inherently "best" for all markets. We believe various factors contribute to investment performance and, importantly when active or passive strategies tend to outperform. Additionally, we believe that the Department's position that low fee equals high quality does not take into consideration an investor's need to consider risk management during and after the asset accumulation phase. We would argue that restricting choice would be particularly damaging to those who have moved from accumulation to distribution and that the Department is not taking into account the dramatic impact that this lack of choice will have on a family's ability to maintain their lifestyle should they experience a down market during the early years of their retirement. We are concerned that passive investing alone cannot provide an adequate level of risk management to an overall portfolio.

Time Varying Return Drivers			
Equities		Fixed Income	
Generally Good for Active	Generally Good for Passive	Generally Good for Active	Generally Good for Passive
Falling Markets	Rising Markets	Rising Interest Rates	Falling Interest Rates
Smaller Caps Outperform	Larger Caps Outperform	Tighter Credit Spreads	Wider Credit Spreads
Utilities & Telecom Underperform	Utilities & Telecom Outperform	Weaker U.S. Dollar	Stronger U.S. Dollar
Weaker U.S. Dollar	Stronger U.S. Dollar		

Data Source: Natixis ISG (June 2015).

The performance of passive strategies is not systematically better than active strategies, as performance varies by strategy, asset class and category. Additionally, performance within an asset class varies through time, as there are performance drivers that favor both active and passive strategies at different points in the business cycle. Also, the Department should

consider that passive strategies mirror market indexes and that creating a low cost exemption, involves other risks, which include, but are not limited to: (a) the systematic risk created by the very real possibility that such an exemption will drive approximately $14+ trillion in retirement assets into passive strategies, which may result in large sums of assets migrating to the stocks of the largest companies (i.e., promoting asset concentration and crowding that will accelerate a market decline given most passive strategies are market cap weighted); (b) the exacerbation of index front-running at the expense of index mutual funds by those who trade in securities before the effective date of an announced change to an index (See "The Hugely Profitable, Wholly Legal Way to Game the Stock Market" July 7, 2015 Bloomberg, http://www.bloomberg.com/news/articles/2015-07-07/the-hugely-profitable-wholly-legal-way-to-game-the-stock-market), which by one estimate costs shareholders of S&P 500 index funds $4.3 billion per year; and (c) reduced access to unique actively managed strategies that may be more appropriate for consideration when viewing the overall investment portfolio of an ERISA plan or IRA.

We ask that the Department reconsider its "high quality, low cost" exemption concept and not substitute the Department's judgment for the judgment of the fiduciaries of ERISA plans and IRAs. We would ask that the Department not take any action that would preclude investor choice and that its regulations remain product neutral, as it should not substitute its assumptions for the informed judgment of the ERISA plan or IRA fiduciary.

Investment Education: Although, we do not currently provide asset-allocation analysis and consultation services directly to ERISA plans and IRAs, we do provide such investment education services to financial intermediaries through our Portfolio Research and Consulting Group. When providing such educational information, it is our experience that general asset-allocation information is helpful to investment professionals, but that information about specific products that may meet a particular asset-class need is also useful.

We are therefore concerned with the proposal that investment education to ERISA plans and IRAs must be limited to asset allocation information only and not be populated with specific investment choices. This result of the proposed rule is in direct conflict with the idea that the proposed rule is intended to provide ERISA plans and IRAs with more information, so that such ERISA plans and IRAs can better understand their investment choices. By not allowing specific investment choices to populate asset allocation models the Department is unnecessarily limiting the effectiveness of the education provided. We understand that the Department's reason for this limitation is that the use of specific funds may be seen by certain recipients as recommendations, but we respectfully ask that the Department set clear parameters (i.e., disclosure requirements) that can be reasonably met by firms that provide asset allocation investment education so that investment-choice information can continue to be provided to ERISA plans and IRAs, who are in need of this type of information in order for them to make well informed investment decisions.

Conclusion: Natixis shares and supports the Department's desire to reduce harmful conflicts of interest, but also respectfully questions the Department's ability to effectively do so under the proposed rule. We believe the proposal in its current state will adversely impact the availability of advice and limit investment choice to those who need it most.

Natixis appreciates the opportunity to provide these comments to the Department and to reiterate its support of the Department's efforts to protect investors. If you have any questions, or require any additional information, please do not hesitate to contact Rosa Licea-Mailloux, Associate General Counsel - Legal Department at (617) 449-2813.

Sincerely,

David Giunta

David Giunta
President & CEO
Natixis Global Asset Management – U.S. and Canadian Distribution